

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	
)	
Commonwealth of Pennsylvania)	CC Docket No. 96-45
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the)	
Commonwealth of Pennsylvania)	

OPPOSITION TO PETITION TO REJECT

TracFone Wireless, Inc. (“TracFone”) hereby opposes the petition of the Pennsylvania Emergency Management Agency (“PEMA”) to reject TracFone’s certification of compliance with 911 obligations in the Commonwealth of Pennsylvania. PEMA’s petition was filed with the Commission January 29, 2009.

On April 11, 2008, the Commission issued an order designating TracFone as an Eligible Telecommunications Carrier (“ETC”) for the limited purpose of offering Lifeline service in eleven jurisdictions, including the Commonwealth of Pennsylvania.¹ In that order, the Commission concluded that TracFone’s proposed wireless Lifeline service would provide a variety of benefits to Lifeline-eligible consumers, including low income Pennsylvania households. However, the Commission’s approval of those ETC applications was made subject to certain conditions, including a condition that TracFone certify in each state that it is in compliance with applicable 911/E911 obligations, including obligations relating to the provision and support of 911 and E911 service. By letter and attached declaration filed with the Commission June 19, 2008, TracFone certified its compliance with applicable state 911 and

¹ Federal-State Joint Board on Universal Service, et al, 23 FCC Rcd 6206 (2008).

E911 laws of several states, including Pennsylvania.² That certification reflects TracFone's good faith conclusion based on its examination of applicable Pennsylvania law in consultation with counsel, that it is in compliance with that law.

TracFone's Pennsylvania 911/E911 compliance certification has been on file and a matter of public record for more than seven months. Nonetheless, PEMA delayed submission of its opposition to that certification (which it has styled as a petition to reject) until January 29, 2009. No reason was offered for this prolonged and unexplained delay. Neither has PEMA provided any reference to a Commission rule or procedure or any other regulatory policy or practice which contemplates the filing a petition to reject a certification of compliance with state 911 laws.

More importantly, PEMA's assertion that TracFone is not in compliance with Pennsylvania 911 law is unsupported and unsupportable. Underlying PEMA's petition is the allegation that TracFone is not in compliance with Pennsylvania's Public Safety Emergency Telephone Act.³ Among its provisions, the Public Safety Emergency Telephone Act establishes a Wireless E-911 Emergency Services Fund. PEMA seems to suggest that TracFone is in violation of that law since it does not contribute to that fund in the manner desired by PEMA. However, whether that law, as enacted, is applicable to TracFone and/or to other providers of prepaid wireless services is an unresolved legal question.

On or about November 26, 2008, the Commonwealth of Pennsylvania commenced a civil law suit against TracFone in which it alleges that TracFone is in violation of the Emergency

² See letter from Mitchell F. Brecher to Ms. Marlene H. Dortch and attached declaration of Leighton W. Lang, Assistant Vice President and General Counsel, State Regulatory Affairs, TracFone.

³ 35 P.S. §§ 7011, *et seq.*, as amended.

Telephone Act.⁴ On January 28, 2009, TracFone filed with that court its answer and new matter in which it has denied the allegations underlying PEMA's complaint and asserted that the Emergency Telephone Act, as enacted, does not obligate TracFone to contribute to the state's 911 fund out of its own resources, as claimed by PEMA.

The question of whether Pennsylvania's Emergency Telephone Act imposes a 911 fee obligation on TracFone is a question of state law -- an unresolved question which is currently pending before a Pennsylvania court. Questions of state law and of compliance with state law, if applicable, are to be adjudicated before state tribunals of competent jurisdiction, not before the Federal Communications Commission. As noted above, TracFone's Pennsylvania certification is based upon its own good faith conclusion that it is in compliance with applicable Pennsylvania 911 and E911 law. That certification conforms fully with the certification condition imposed upon TracFone by paragraph 16 of its April 11, 2008 order designating TracFone as an ETC. If and when it is finally determined by courts of competent jurisdiction that, as a matter of law, TracFone is not in compliance with the applicable provisions of the Emergency Telephone Act, then -- and only then -- will PEMA have any basis for challenging TracFone's state law compliance certification.

Several additional aspects of PEMA's petition warrant brief comment. First, PEMA alleges without any supporting documentation that TracFone had communicated to it a willingness to contribute to the state's 911 fund based on a method utilized in Tennessee.⁵ It is correct that several years ago, TracFone proposed to PEMA that it collect and remit E911 fees in Pennsylvania on an interim basis using the method established by the State of Tennessee.

⁴ Pennsylvania Emergency Management Agency, v. TracFone Wireless, Inc., No. 565 MD 2008, filed November 26, 2008 in the Commonwealth Court of Pennsylvania.

⁵ PEMA Petition at 4.

However, it did so as an interim measure only to afford PEMA, TracFone and other interested parties an opportunity to develop a workable E911 fee collection method which would result in all users of wireless service contributing to the support of E911 and which would ensure that carriers not be asked to contribute to E911 out of their own pockets. That interim proposal was never accepted by PEMA.

Second, PEMA alleges that TracFone has been unwilling to work with PEMA to develop a workable solution.⁶ That is absolutely incorrect! On repeated occasions, TracFone has suggested workable alternative 911 collection methods which, if enacted, would result in collection of 911 fees on all wireless services, including all prepaid services. Yet those alternative approaches have been summarily rejected by PEMA on every occasion. PEMA's only acceptable collection methodology is that companies who have no means for collecting 911 fees from their customers and remitting the collected fee proceeds to the commonwealth's 911 fund must contribute to the 911 fund out of their own resources, and that they must do so, notwithstanding the fact that providers of post-paid services with whom they compete have no such "pay out of their own pocket" obligations.

⁶ *Id.*

In summary, PEMA's untimely petition to reject TracFone's certification of compliance with state law should be dismissed or denied pending a final and legally binding determination of the application of that state law to TracFone by a Pennsylvania state court of competent jurisdiction.

Respectfully submitted,

TRACFONE WIRELESS, INC.



Mitchell F. Brecher
GREENBERG TRAURIG, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037

Its Attorneys

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CERTIFICATE OF SERVICE

I, Raymond Lee, a Legal Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that a true and correct copy of the foregoing Opposition to Petition to Reject has been served via overnight delivery this 9th day of February, 2009, on the following:

Patrick S. Cawley
Deputy Attorney General
Office of Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

Susan J. Forney
Chief Attorney General
Office of Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

A handwritten signature in black ink, appearing to read "Raymond Lee", is written over a horizontal line.

Raymond Lee